

TCEQ PROPOSED REGISTRATION NO. 710921

APPLICATION BY	§	BEFORE THE
CHILDRESS OUTHOUSES, LLC	§	TEXAS COMMISSION ON
AUTHORITY FOR PROPOSED	§	ENVIRONMENTAL
SLUDGE REGISTRATION NO. 710921	§	QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on the application of Childress Outhouses, LLC (Applicant) for proposed Beneficial Land Use Registration No. 710921, and the ED's preliminary decision. Pursuant to 30 Texas Administrative Code (TAC), Section (§) 312.13(d), before a registration is issued, the ED reviews any written comments when they are received within 30 days of mailing the notice. The Office of the Chief Clerk received timely comments from the following: Herb Darling with the Burnet County Environmental Services (Burnet County or the County); Joy and Jimmy Stanley; and Charles Shell, representing the Central Texas Groundwater Conservation District (CTGCD). This Response addresses all timely public comments received, whether or not withdrawn.

DESCRIPTION OF FACILITY

The Applicant has applied to the TCEQ for proposed Registration No. 710921 that would authorize the beneficial land application of domestic septage at a rate not to exceed 122,308 gallons per acre per year (gallons/acre/year). The proposed land application site is approximately 30 acres within a 45.79 acre-tract located at 605

County Road 121, in Marble Falls, Burnet County, Texas. The draft registration does not authorize any discharge of pollutants into water in the State.

PROCEDURAL BACKGROUND

TCEQ received the application on October 21, 2011, and declared it administratively complete on December 12, 2011. Notice was mailed as required by 30 TAC § 312.13(c) on December 21, 2011. The public comment period closed on January 20, 2012. The ED completed the technical review of the application and prepared the preliminary decision and draft registration on May 8, 2012.

COMMENTS AND RESPONSES

COMMENT 1:

Joy and Jimmy Stanley expressed concern that that the land application site would have a negative impact on their property value.

RESPONSE 1:

The TCEQ does not have jurisdiction under the Texas Water Code or the Texas Health and Safety Code or their regulations to address or consider property values, the marketability of adjacent property, or economic development when evaluating an application for registration.

COMMENT 2:

Joy and Jimmy Stanley expressed concern about the possibility of septage getting into their water supply well.

RESPONSE 2:

This draft registration does not authorize discharge of waste into the waters of the State of Texas. TCEQ has established management requirements, in accordance with 30 TAC Section 312.44, which are incorporated into the draft registration to protect against septage runoff and surface and groundwater contamination. The requirements in 30 TAC 312.44(h) are designed to prevent runoff from land application facilities beyond the active application area and to protect the quality of the groundwater and the surface water within the application area. In accordance with 30 TAC §312.44(c)(2), the Applicant must maintain a 150 foot buffer from septage application from all private water wells, and a 500 foot buffer from public water supply wells, intakes, public water supply springs or similar sources, public water treatment plants, or public water supply elevated or ground storage tanks. Registration provisions also require buffers from the application area and any groundwater conduits, all surface water features, and the property boundary (50 foot buffer). In addition, the draft registration contains Special Provision E, which states that all septage staging areas shall be located outside of these required buffers.

The Applicant is required to apply septage uniformly over the surface of the land under conditions that prevent sludge runoff beyond the active application area. The Applicant must also protect the quality of the surface water and the soils in the unsaturated zone. The Applicant is prohibited from applying septage during rainstorms or during periods in which surface soils are water saturated, frozen, or snow-covered and in areas having topographical slopes in excess of eight percent. This application

area has a slope of less than eight percent. The draft registration requires the Applicant to cease further sludge application if sludge runoff from the active application area is evident and until the condition is corrected. The draft registration also requires that the Applicant prevent septage debris from leaving the site.

It is also required that septage be applied at a rate equal to the nitrogen uptake rate of the plants being grown (the agronomic rate), thus ensuring that the nutrients are fully utilized by the plant and none are available for horizontal seepage into groundwater or lateral seepage into surface water bodies. The Applicant is required to land apply septage at rates no greater than the agronomic rates. Agronomic rate is defined as:

- The whole sludge/septage application rate (dry weight basis) designed:
- (A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and
- (B) to minimize the amount of nitrogen in the septage that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

If the Applicant fails to comply with the registration or rules, he will be subject to enforcement actions.

Based on the information provided in the application, Mr. and Mrs. Stanley's well is outside of the required buffer for private water wells. Mr. and Mrs. Stanley did not provide any specific details regarding the location of their water well on their property nor any information about the depth of the well or construction details for their well. Compliance with the draft registration provisions and TCEQ regulations should prevent the potential for contamination of the Stanleys' water well.

COMMENT 3:

Joy and Jimmy Stanley expressed concern about odor that would be caused by the land application of septage.

RESPONSE 3:

TCEQ has established management requirements for odor controls at land application sites, which are incorporated in the draft registration. These include 30 TAC § 312.44(c)(2), that requires the registration to include buffer restrictions that do not allow a land application area to be located closer than 750 feet to a business or occupied residential structure and closer than 50 feet to a public right of way or property boundary to minimize any off-site odor problems.

In addition, the draft registration does not allow the Applicant to maintain or create any nuisance conditions. 30 TAC § 312.44(j)(1) requires the Applicant to operate the proposed land application site in a manner to prevent public health nuisances. The Applicant must prevent septage debris from blowing or running off site boundaries or into surface waters. The Applicant must minimize dust migration from the site and access roadways and minimize objectionable odors through incorporation of septage into the soil or by taking some other type of corrective action. Periodic site inspections are conducted by staff from TCEQ's field offices to determine whether these regulatory mandates are met. TCEQ also requires the Applicant to submit annual quarterly reports that aid in monitoring compliance with specific conditions outlined in the draft registration.

If members of the public experience nuisance conditions from the application area, they may contact the TCEQ Regional Office at 903-535-5100 or call the toll free 24-hour complaints hot line at 888-777-3186. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/compliance/complaints/>. On a complaint basis, regional investigators will investigate. If the regional investigator documents a violation of TCEQ regulations or the registration, then appropriate action may be taken, which may include referral for an enforcement action. In addition, the draft registration does not limit the ability to seek legal remedies regarding any potential nuisance or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

COMMENT 4:

Burnet County stated that the location of the land application site is adjacent and uphill from a granite gravel quarry that has exposed the local aquifer. The County had concerns about possible contamination of the aquifer due to runoff from the land application site. The CTGCD stated that the land application site is in the recharge zone of the Granite Gravel Aquifer, a sole source of drinking water for many households, and was concerned that the aquifer is vulnerable to contaminants and/or excess treatment chemicals due to the porous formation and shallow depth to the water table. CTGCD stated that their Board of Directors voted unanimously to oppose the application and felt that allowing the application of septage to the land is an unacceptable risk to the groundwater quality.

RESPONSE 4:

The proposed septage application area is located immediately north of the defined recharge zone of the Granite Gravel aquifer. Although the gravel quarry activities adjacent to and just south of the proposed application area may have exposed the Granite Gravel aquifer, the draft registration contains provisions to prevent septage from running off site and from entering ground and surface water.

As part of the application review process, a geologist on the TCEQ Water Quality Assessment Team reviewed the information submitted by the Applicant that related to groundwater wells and surface water bodies. Buffer zones were applied to the appropriate known water wells and surface water bodies located within the application area in accordance with the requirements in 30 TAC §312.44. These buffer zones are as follows:

1. 500 feet from any public water supply well, intake, public water supply spring or similar source, public water treatment plant, or public water supply elevated or ground storage tank;
2. 200 feet from any solution channels, sinkholes, or other conduits to groundwater;
3. 200 feet from waters in the State of Texas (33 feet if the sludge is incorporated);
4. 150 feet from any private water supply well; and
5. 50 feet from the property boundary.

The TCEQ Water Quality Assessment Team considered the importance of the local groundwater and surface water resources, the nutrient and water requirements of the crop to be grown onsite, the soil types identified within the land application area, and the management practices outlined in 30 TAC §312.44. They concluded that no adverse impacts should occur to groundwater or surface water if the Applicant complies with the regulations and the conditions specified in the draft registration.

The Applicant must follow additional requirements to protect groundwater and surface water in addition to the management requirements designed to protect against groundwater contamination that are incorporated into the draft registration. He is required to apply septage uniformly over the land's surface under conditions that prevent runoff of septage beyond the active application area and that protect the surface water quality and the soils in the unsaturated zone. The draft registration prohibits the Applicant from applying septage during rainstorms or during periods in which surface soils are water saturated. The draft registration also requires the Applicant to cease further septage application if runoff from the active application area is evident and until the condition is corrected.

The draft registration contains provisions in accordance with 30 TAC Chapter 312, which are designed to keep septage within the plant rooting zone, generally the top few feet of the soil profile. Considering site specific conditions indicated in the registration application and the proposed application rate, the septage is expected to remain within the plant rooting zone for uptake by the crop, and not reach the aquifer.

COMMENT 5:

Burnet County expressed concern about the size of the property; based on the aerial photography, it appears that only about 20 acres of the 50 acre site is currently in cultivation. The County stated that a United States Department of Agriculture Soil Survey indicated a Hye series of soil in this area with a restrictive layer at 36 to 40 inches. This demonstrated that rain runoff tends to move rapidly through the upper layer of the sandy loam, encountering the sandy clay loam, and moves horizontally along

that layer. Because of the proximity of the Granite Gravel Aquifer, there would be limited time and soil contact for treatment before exposure to its water table.

RESPONSE 5:

The Applicant requested authority to land apply domestic septage for beneficial use to 30 acres of the 45.79 acres at the site. Coastal Bermuda grass and rye grass will be planted and maintained onsite for year-round crop cover. In accordance with 30 TAC §312, the draft registration requires that sludge and septage be applied at a rate equal to or less than the nitrogen requirement of the plants being grown (the agronomic rate). The agronomic rate is designed to provide the amount of nitrogen needed by the crop while minimizing the amount of nitrogen that passes below the root zone of the crop, thus ensuring that the nutrients are fully utilized by the plant and none are available for leaching into groundwater or seeping into surface water bodies.

Based on a review of the registration application, an evaluation of the soils, and waste application rate information, the TCEQ's Water Quality Assessment Team recommended that the annual application rate be reduced from 151, 646 gallons/acre/year to 122, 308 gallons/acre/year. Based on this and other information contained in the registration application such as soil type and proposed crops, the septage is expected to stay within the root zone for subsequent uptake by plants or breakdown by soil microorganisms; therefore the restrictive layer at 36 to 40 inches is not expected to limit the land application of septage at this site.

No changes to the draft registration have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director


Robert Martinez, Director
Environmental Law Division



Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Telephone No. 512-239-5692
Facsimile No. 512-239-0606
REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 23, 2012, the "Executive Director's Response to Public Comment" for Proposed Registration No. 710921, was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro, Staff Attorney

Environmental Law Division
State Bar No. 03997350

